such endorsement being mandatory by reason of section 4(3) of the Proclamation.

The case in itself was of no importance but for the benefit of Magistrates I feel I should make a few observations on the subject of sections 173A and 294 of the Criminal Procedure Code.

There is a certain amount of overlapping between the two sections in the sense that very often a case may be appropriately dealt with under either of them. There are, however, certain differences which must be carefully observed.

Section 173A is applicable in all cases triable in the Magistrate's Court irrespective of the nature of the prescribed punishment and it is to be observed that where it is proposed to exercise the powers given by it, the Court should not proceed to conviction.

Section 294 on the other hand, which only applies in the case of adult offenders, can only be made use of where a person has been convicted and where his conviction is for an offence punishable with imprisonment without the option of a fine.

I do not wish to lay down any hard and fast rule, which in any event would be difficult to prove, but Magistrates would be well-advised only to make use of section 294 where an offence which is generally of a serious nature and which is punishable with imprisonment has been committed by an adult offender (i.e. an offender of 16 years or over) and where it is considered desirable to place him on probation.

All other cases which are thought to call for unusually lenient treatment can be more appropriately dealt with under the provisions of section 173A. In this connection, however, it is to be observed that generally speaking where an offence has been committed it calls for punishment and that in the case of the numerous statutory offences punishable by a fine the appropriate way of dealing with cases that are not in themselves very serious is the imposition of a fine adjusted in amount according to the view taken of the seriousness of the offence.

Order accordingly.

PUBLIC PROSECUTOR v. WOO FONG

[Cr. Rev. J. (Thomson J.) October 7, 1955]

[Ipoh — Criminal Revision No. 33 of 1955]

Common Gaming Houses Ordinance, 1953, s. 4(1)(c) — Assisting in carrying on a public lottery — Characters lottery — Charge.

The accused was convicted on the following two charges: "Charge No. 1 — That you at about 3.15 p.m. on 7.5.55 at Yau Tet Shin Street, Ipoh, in the State of Perak were found assisting in carrying on a public lottery, to wit, 1000 character lottery and that you have thereby committed an offence punishable under s. 4(1)(c) of Ordinance No. 26 of 1953. Charge No. 2 — That you at about the same time, date and place were found assisting in carrying on a public lottery, to wit, 10000 character lottery and that you have thereby committed an offence punishable under s. 4(1)(c) of Ordinance No. 26 of 1953". On each charge he was fined $450 or three months imprisonment in default of payment.

It appeared that in the transactions in this case, persons desiring to participate staked amounts of money on what they considered would be the last three digits or the last four digits on the number of the ticket which proved to be the winning ticket in the sweepstake organised by the Singapore Turf Club in connection with a particular horse race to be run at Singapore on May 7, 1955. The question considered on the revision was whether the accused was properly convicted of two offences or whether there was only one offence.

Held: (1) where an operation is conducted by a single person in relation to a single specific sweepstake then there are not a number of separate and distinct lotteries according to whether two or three or four digits are staked upon but the whole operation constitutes a single lottery; (2) therefore there was only one offence in this case and the accused was not properly convicted of two offences.

CRIMINAL REVISION.

Thomson J. : — This case raises a question of some importance relating to the so called "characters lottery" which since it was imported from America some five years ago has become an extremely popular indulgence of the inhabitants of this country, or at any rate of so much of this country as lies to the north of the Bernam River.

The accused was convicted in the Magistrate's Court at Ipoh on the following two charges :—

"Charge No. 1. That you at about 3.15 p.m. on 7.5.55 at Yau Tet Shin Street, Ipoh, in the State of Perak were found assisting in carrying on a public lottery, to wit, 1000 character lottery and that you have thereby committed an offence punishable under s. 4(1)(c) of Ordinance 26 of 1953.

Charge No. 2. That you at about the same time, date and place were found assisting in carrying on a public lottery, to wit, 10000 character lottery and that you have thereby committed an offence punishable under s. 4(1)(c) of Ordinance 26 of 1953".

On each charge he was fined $450 or three months imprisonment in default of payment.

The only question to be considered is whether the accused was properly convicted of two offences or whether there was only one offence, and that in its turn depends on the question of whether he was assisting in the conduct of a single lottery or of two separate and distinct lotteries.

The accused was convicted with the assistance of the presumption contained in section 11 of the Common Gaming Houses Ordinance and it is accordingly not clear from the record what actual part he was taking in the conduct of the lottery or lotteries in question or whether he was taking such part as a principal or as

an agent. There is, however, no doubt as to the nature of the operation that was being carried out.

What happened was that persons desiring to participate staked amounts of money on what they considered would be the last three digits or the last four digits of the number of the ticket which proved to be the winning ticket in the sweepstake organised by the Singapore Turf Club in connection with a particular horse race to be run at Singapore on 7th May, 1955. If the digits selected proved to be the correct ones then the person making the stake would be paid $700 or $4,000 for each dollar staked according as to whether he had placed his stake on three or four digits. Presumably, though there was no evidence of this, stakes would also be accepted in respect of the last two digits in which case presumably the amount to be paid in the event of the forecast proving correct would be $70.

There can be no doubt that such an operation constitutes a lottery within the meaning of the Common Gaming Houses Ordinance for it is a method of distributing money according to pure chance. To my mind, however, it is clear that where such an operation is conducted by a single person or group of persons in relation to a single specific sweepstake then there are not a number of separate and distinct lotteries according as to whether two or three or four digits are staked upon but the whole operation constitutes a a single lottery.

The Ordinance defines a lottery as follows:—

"Lottery" includes any game, method, or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same be held, drawn, exercised, or managed within or without the Federation.

Whether this particular type of lottery is to be described as a game or a method or a device I do not see how it can be said that there is more than one game or method or device or that there is more than a single distribution on each occasion on which it is organised simply because it is open to the persons participating to place their stakes upon different concatenations of circumstances when each concatenation of circumstances is to be determined by the same chance, that is to say, by what proves to be the winning number in a particular sweepstake.

I would draw an analogy with the game of roulette. Here, the players place their stakes upon different circumstances upon red as against black, upon odd as against even or upon individual numbers, and the amount paid depends on the circumstance on which the stake has been placed. The question, however, whether in each case anything is payable at all depends upon a single circumstance, that is to say, the final destination of the ball when the wheel comes to rest. In such a case it seems clear there is a separate lottery on each occasion when the wheel is spun and the ball is thrown but it would be an abuse of language to say that on each such occasion the persons who placed their stakes on the red were participating in a different lottery from that participated in by those who placed their stakes on the odd or that participated in by those who placed their stakes on individual numbers, or that the person in charge of the operation was conducting anything but a single lottery.

I called for this particular case in revision because there appeared to be some doubt in the minds of Magistrates on the point I have dealt with. As regards the case itself, I think that justice will be done if I set aside the conviction on the second charge and increase the sentence in respect of the first charge to a fine of $900 or six months imprisonment in default of payment.

Order accordingly.

CHIN CHOY v. PUBLIC PROSECUTOR

[C. A. (Mathew C.J., Wilson and Abbott JJ.) October 8, 1955]

[K. L. — F.M. Criminal Appeal No. 42 of 1955]

Criminal Procedure Code (Cap. 6), ss. 165 and 183(ii) — Wrongful joinder of charges — Whether this constitutes an illegality or an irregularity — Charges not capable of being tried together — Practice — Emergency Regulations, 1948, reg. 5(1) — Emergency Regulations, 1951, reg. 4(1)(a) and (b).

The appellant in this case was charged with two offences of consorting contrary to reg. 5(1) of the Emergency Regulations, 1948, an offence of being in possession of a revolver contrary to reg. 4(1)(a) of the Emergency Regulations 1951 and an offence of being in possession of ammunition contrary to reg. 4(1)(b) of the Emergency Regulations, 1951. The period which these offences covered were from 1948 to 1955. He was asked to plead to these four charges and eventually pleaded guilty to the two charges which related to consorting and claimed trial to the two charges under reg. 4.

Held: (1) the offences did not form part of the same transaction and were therefore wrongly joined; (2) the trial together of the four charges was an illegality — the appellant was required to plead to four charges which were joined and the fact that he pleaded guilty to two of them does not cure the original illegality.

Semble: when charges are wrongly joined, the prosecutor should be asked to elect before the pleas are taken which charge or charges he wishes to proceed on, and thus avoid a trial which is illegal and bad. As a practice, charges which are not capable of being tried together should be made on separate charge sheets and the subject of separate trials.

Cases referred to:—

(1) *Ja'afar bin Hussain v. Public Prosecutor* (1950) M.L.J. 154.